

INTERNAL REVENUE SERVICE

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Dear

This letter is in response to your recent letter to the Internal Revenue Service concerning your inability to obtain disability payments from the City of L, your deceased husband's former employer.

We understand the facts to be as follows. Your husband, who is now deceased, was an employee of L. He was a participant in L's 457 plan. You are now disabled and L refuses to pay you a disability pension from your husband's 457 plan.

We do not have specific information about the City of L's 457 plan. Therefore, it is difficult to answer your question definitively. However, we are glad to provide you with the following general information.

Section 457 plans are nonqualified plans of deferred compensation that are available only to state and local governments and tax-exempt organizations. Section 457(a) of the Internal Revenue Code (Code) provides that in the case of a participant in an eligible plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid to the participant or other beneficiary.

Section 457 defines what constitutes an eligible plan for purposes of section 457. First, only individuals who perform service for the employer may be participants. Second, the maximum amount that may be deferred under the plan for the year 2002 may not exceed the lesser of \$12,000 or the participant's includible compensation. However, a plan may provide a special limited "catch-up" provision permitting larger deferrals for participants approaching normal retirement age in the event those participants had not deferred the maximum amount allowed in earlier years. Third, the agreement must be entered into before the beginning of the month in which the compensation to be deferred is earned. Fourth, certain distribution requirements set out in section 457(d) must be met. These rules basically provide that amounts will not be made available to participants or their beneficiaries earlier than the calendar year in which the participant attains age 70 ½, when the participant is separated from service with the employer, or when the participant is faced with an unforeseeable emergency. Additionally, these

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rules set out special minimum distribution requirements concerning the time within which payments must, at a minimum, be made.

In general, when an employee separates from service with an employer which has maintained a 457 plan, he will receive the value of his account. This will either be paid in a lump sum or over a certain number of years.

If there is an amount available in your deceased husband's 457 plan and you have been named as a beneficiary, you may receive this amount. If you are receiving payments from your deceased husband's 457 account, these payments may be accelerated if you have an unforeseeable emergency and the plan permits payouts for unforeseeable emergencies.

Section 457 plans generally do not provide for a payout of life insurance or disability benefits. These benefits are generally offered under another of the employer's benefits packages. If the employee has invested in some type of annuity contract, it is possible for a beneficiary to receive a benefit after the employee's death.

We have secured some additional information about L's benefit programs from L's website. This information states that an employee will receive the value of his 457 account upon retirement, which is the normal practice for such plans. L offers a long term disability benefit for its employees, but this benefit apparently covers only the employee's disability, not that of a spouse.

The only other plan from which it appears you may receive a benefit is the retirement plan that Lubbock participates in through the TMRS. We do not have enough information about L's participation in this plan to be more specific.

We suggest that you contact L's Personnel Office and receive a written explanation as to any benefits you are entitled to receive. You may also wish to request a written explanation as to why you will not receive any benefits to which you think you are entitled.

We trust that this information addresses your concerns. This is a general information letter and not a ruling. Thus, it cannot be relied upon as a ruling. If you would like to discuss this matter further, contact [REDACTED]

Sincerely,
Robert D. Patchell
Chief, Qualified Plans Branch Two
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government Entities)